Supreme Court, U.S.
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No. (D)

In The

Supreme Court of the United States

GRADY LAVON SLADE, JR.,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Georgia Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

When the State of Georgia requires claims of ineffectiveness be brought at the earliest possible opportunity or be lost and yet denies remand for proof of trial counsel's ineffectiveness does it violate the Sixth and Fourteenth Amendments to the United States Constitution?

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V. BASIS FOR JURISDICTION OF THIS COURT

A. Date of Orders to be Reviewed

On July 31, 2007, the Georgia Court of Appeals affirmed Petitioner's conviction on the two issues presented in this petition. On January 28, 2008, the Georgia Supreme Court denied petitioner a writ of certiorari on the two issues.

B. Jurisdictional Basis For Review

Under the provisions of 28 U.S.C. §1257, this Court has jurisdiction to review the final order of a

lower state court when certiorari is denied by the state's court of last resort.

VI. CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

This Petition involves the *Sixth and Fourteenth Amendments to the United States Constitution,* the Georgia child hearsay statute, O.C.G.A. §24-3-16, Georgia sodomy and aggravated sodomy provisions O.C.G.A. §16-6-2, the Georgia child molestation and aggravated child molestation provisions, O.C.G.A. §16-6-4.

The *Sixth Amendment to the United States Constitution* states in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

The *Fourteenth Amendment to the United States Constitution* provides in pertinent part, " . . . No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

O.C.G.A. §16-6-2 states in relevant part: "(a)(1) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. (2) A person commits the offense of

aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age. . . ."

O.C.G.A. §16-6-4 states in part, "(a) A person commits the offense of child molestation when he or she does anything immoral or indecent to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person." and "(c) A person commits the offense of aggravated child molestation which act physically injures the child or involves an act of sodomy."

O.C.G.A. §24-3-16 "A statement made by a child under the age of 14 years describing any act of sexual contact or physical abuse performed with or on the child by another or performed with or on another in the presence of the child is admissible in evidence by the testimony of the person or persons to whom made if the child is available to testify in the proceedings and the court finds that the circumstances of the statement provide sufficient indicia of reliability."

VII. STATEMENT OF THE CASE

The State indicted Petitioner on two counts of child molestation. (App. 30, 31) A *nolle prosequi* was entered on that indictment on the date Petitioner was sentenced on the accusation this Petition concerns. (App. 16)

The State's Accusation charged Petitioner with three counts of aggravated sodomy, two counts of aggravated child molestation, and two counts of child molestation. Petitioner waived indictment. (App. 23) Petitioner was appointed Jerry Wayne Moncus as his trial counsel.

At trial, the State's similar transaction motion was heard as to evidence from a 1997 allegation, which had been dead docketed against Petitioner (involving Grady Lavon Slade III, Petitioner's son). (T-5) Petitioner's trial counsel objected that because the case was rejected for prosecution, it could not now serve as a credible similar transaction. (T-12) The trial court then ruled that the 1997 allegations were admissible as similar transactions.

Petitioner was tried before a jury on the 14th and 15th days of February, 2006. The jury convicted Petitioner on all seven counts. (T-228) The Court merged counts and sentenced on Counts One, Two, Five and Six. Petitioner was sentenced to thirty years to serve on Counts One and Two and twenty years on counts Five and Six, all such time to run concurrent. (App. 13-15)

Petitioner's trial counsel timely filed his notice of appeal, but withdrew before filing a brief. (App. 12)

VIII. STATEMENT OF MATERIAL FACTS

Petitioner's trial counsel indicated he had official objection to the use of child hearsay, but he understood

that the trial court would allow the use, the declarants being present. (T-18) State Victim Witness coordinator, Brenda Hoffmeyer was called to testify about a conversation she undertook with RRF, the alleged victim in the case. Hoffmeyer testified repeatedly with no objection by Petitioner's trial counsel that she told RRF to tell the truth. (T-36, l-25; T-37, l-7,8; T-38, l-4) Hoffmeyer testified that RRF told her about threats and aggravated sodomy by Petitioner, and then she stated with no objection by Petitioner's attorney as follows:

> "Are you telling the truth? and he said, 'yes.' And I said, 'Why didn't you tell this when you were interviewed, when you did your videotape?' and he looked at me and he said, 'I was so scared.' And I said, 'Why are you telling me this now?' And he said, 'because I trust you.'" (T-39)

The State then called Petitioners wife, Billie Slade. On cross examination, Petitioner's trial counsel asked her about RRF's medication. The State objected to questions about medication. (T-76) Petitioner's trial counsel indicated that he intended to provide evidence illustrating RRF's mood swings and thought disorders, and ultimately calling into question the credibility of RRF. (T-78) The trial court sustained the State objection to relevancy (without an expert). (T-78)

Billie Slade testified that when RRF was placed with his other grandmother, Christine Forrest, his mannerism changed towards everybody. (T-78)

A custody case had been going on from 2002 through 2005. (T-195) Petitioner asked in what respect it changed, and the State objected to bringing in specific instances of conduct. The trial court sustained the State's objection prior to argument of Petitioner's trial counsel. (T-78)

The State introduced testimony by Department of Family and Children Services (DFCS) worker Becky Haley as to the protocol of the investigation of alleged sexual crimes, and she produced a 1997 video tape of the interview done with Petitioner's son, Grady Slade, III, the State's similar transaction claim. (T-106) Petitioner's son was born October 2, 1986, and was 19 years of age at trial. (T-118) The video tape of the 1997 interview was moved for introduction as State's exhibit number two. Petitioner's trial counsel stated "No Objection" and the videotape was introduced and played for the jury. (T-107) RRF was placed in Petitioner's home after the 1997 allegation after a DFCS review. (T-155, 156)

Crystal Slade, mother of Grady Slade, III then testified in response to State questioning "Do you recall the words he used?" Crystal Slade replied, "He just said that he was touching him." On further questioning, "He did tell me that he had fondled him and at that point that's when I had called the police." (T-125) and "... that he had masturbated him" (T-128)

Crystal Slade continued as follows:

> "He [Petitioner's son] began pulling out his eyelashes, constantly pulling his hair out, cutting his self, punching his self, choking his self even in class. I had to put him in private school. The teachers couldn't handle him in public school. Soiling his pants. He would hold his self until he would use the bathroom on his self." (T-129)

She clarified that Petitioner's son's hospitalization for suicide attempts and the problem conduct was all after he made the disclosures. (T-129) Petitioner's trial counsel did not object to Crystal Slade's hearsay characterizations or move to strike the testimony.

Only later at trial did the adult Grady Slade, III testify. (T-137-148) Having described the similar transaction acts alleged (T-139-142), he testified "Yes, those things I could remember, they did not come off the tape." (T-148)

Christine Forrest, RRF's grandmother, testified she had had custody of RRF for four years. (T-151) She testified that RRF told her "Papaw Grady hurts me" and he didn't want to visit. (T-152) Ms. Forrest testified that the only thing she told RRF was to tell the truth. (T-153)

Christine Forrest knew about the previous allegations against Petitioner. (T-166) For two years she and Petitioner and his wife had shared custody of RRF half time. (T-155, 156) Petitioner and his wife had custody of RRF's brother Zanthias. (T-165)

Following a second hearing, physical custody was placed with Christine Forrest with every other weekend visitation with RRF for Petitioner and his wife. (T-155, 156) After the second hearing, when Forrest regained full custody, Forrest received all of the Social Security payment for RRF and his sister. (T-159) Her attorney wouldn't use the prior allegations against Petitioner in the custody hearing. (T-167, 168) RRF had never talked with her about allegations of oral sex. (T-168-169) He told her, "I don't want to talk about it" every time. (T-153) Petitioner testified that RRF was always "very quiet and to his self" (T-199)

RRF had not related any sexual contact apart from a touching or fondling in his videotaped interview at the Greenhouse, leading to the initial indictment (T-39), and his only other testimony – not through Brenda Hoffmeyer or his mother – and by direct examination takes place from pages 181 through 185 as follows:

> "Yes. . . . Yes. . . . RRF. . . . Yes. . . . Yeah. . . . I'm nine. . . . June, the 6th. . . . Ninety-six. 1996. . . . Christine. . . . Yes. . . . Yeah. . . . Yes. . . . No. . . . Yeah. . . . Yeah. . . . Yeah. . . . Yeah. . . . Yeah. . . . Yeah. . . . Yes. . . . No. . . . Because this happened, because he's really not my papaw. . . . Because this happened, because he's really not my papaw. . . . Yeah. . . . Yes. . . . No. . . . Yes. . . . Yes. . . . Yes. . . . Yes. . . . Yes. . . . Yes. . . . Yes. . . . Yes. . . . Yes. . . . Yeah. . . . Yes. . . . Yes. . . . Yes. . . . Yes. . . . Point. (T-181-185)

Petitioner took the stand and denied the 1997 transaction as reported by his adult son. (T-191) In addition, Petitioner testified that he never molested RRF. (T-193) He testified that he waived indictment because he didn't have anything to hide. (T-194) He testified that he and his wife had once received half of the Social Security funds for RRF (T-200) Petitioner denied that he stated to his ex-wife Crystal Slade that he was homosexual. (T-200) Petitioner testified that eight individuals stayed at his home in the relevant time period from December 2004 through July 2005. (T-196) Finally, he agreed with prior testimony from Jennifer Norris and Christine Forrest that RRF was not visiting for large periods during the six-month period at issue. (T-198, 157, 172, 173)

IX. TREATMENT OF THE ISSUES BELOW

The Georgia Court of Appeals, in its reconsidered opinion, found that Petitioners trial counsel abandoned his cross examination of a key witness on RRF's bias. (App. 5, 6) The Georgia Court of Appeals found Petitioner's trial counsel's objection as to child hearsay testimony was too general to be used to stop hearsay played later for his adult son where Petitioner's trial counsel did not make contemporaneous objection. (App. 3) In addition, it determined that the requirement in the child hearsay statute to only allow it when the "child" is present applied to the 19-year-old adult, making objection unnecessary. (App. 3, 4)

Finally the Georgia Court of Appeals citing *Hunter v. State,* 281 Ga. 693, 697, 642 S.E.2d 668 (2007) found that it could determine from the record that it did not need to remand for a hearing on the ineffectiveness claim. Petitioner had argued generally and specifically as to ineffectiveness. (App. 19-22) The Appeals Court found that no true "bolstering" was allowed and that the trial attorney did not need to object to child hearsay treatment for the adult witness, and it denied the remand. (App. 8, 9)

X. ARGUMENT AS TO THE NECESSITY OF REVIEW

A. When the State of Georgia requires claims of ineffectiveness be brought at the earliest possible opportunity or be lost and yet denies remand for proof of trial counsel's ineffectiveness does it violate the Sixth and Fourteenth Amendments to the United States Constitution?

i. The Georgia Rule Denies the Right To Counsel and Violates The Sixth and Fourteenth Amendments to the United States Constitution

Recently in *Massaro v. United States*, 538 U.S. 500, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003) this Court noted the difficulty in reviewing ineffectiveness claims on direct review absent evidentiary hearings, as follows:

> "When an ineffective-assistance claim is brought on direct appeal, appellate counsel and the court must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose. Under *Strickland v. Washington*, 466 U.S. 668 (1984), a defendant claiming ineffective counsel must show that counsel's actions were not supported by a reasonable strategy and that the error was prejudicial. The evidence introduced at trial, however, will be devoted to issues of guilt or innocence, and the resulting record in many cases will not disclose the facts necessary to decide either prong of the *Strickland* analysis."

Massaro v. United States, 538 U.S. at 505.

> "On direct appeal it puts counsel into an awkward position vis-à-vis trial counsel. Appellate counsel often need trial counsel's assistance in becoming familiar with a lengthy record on a short deadline, but trial counsel will be unwilling to help appellate counsel familiarize himself with a record for the purpose of understanding how it reflects trial counsel's own incompetence."

Massaro v. United States, 538 U.S. at 506.

The Court opined that " . . . few such claims will be capable of resolution on direct appeal and thus few will benefit from earlier resolution." *Massaro v. United States*, 538 U.S. at 507.

Georgia is one of only a handful of state jurisdictions which impose an absolute rule. *Commonwealth v. Grant*, 813 A. 2d 726, 738 (2002) at n.11 The Supreme Court of Pennsylvania opinion referred to by the Court held that "a claim raising trial counsel ineffectiveness will no longer be considered waived because new counsel on direct appeal did not raise a claim related to prior counsel's ineffectiveness." *Commonwealth v. Grant*, 813 A. 2d at 738.

Due to the Georgia Rule, Petitioner now forfeits his federal right to have post-conviction relief in order to satisfy the Georgia scheme which makes short shrift of his Sixth Amendment right to counsel under the United States Constitution. Unlike citizens in those states which allow appellate attorneys to delay a resolution of the ineffectiveness claim in a more fact intensive environment, Petitioner is forced to use *only* such proof afforded by the transcript.

Petitioner urges this Court to take certiorari to determine if Petitioner is denied the privileges of a citizen and Due Process in the denial of an adequate structure to present his ineffectiveness claim as well as Equal Protection in the fact he will likely lose other post-conviction remedies by his appeal when other similarly situated citizens will not be forced to forfeit the expression of their Sixth Amendment right in direct appeal.

ii. Petitioner Made An Adequate Showing of Performance Problems and Harm to Require Remand.

Petitioner's trial attorney waived objection to the most harmful evidence. Although prior to this case, Georgia had never allowed 19-year-old adults to be benefited by the Georgia child hearsay statute, Petitioner's attorney declined to object to the admission of a harmful videotape and live witness hearsay about Grady Slade, III. (T-107)

The Court of Appeals noted that Petitioner's trial attorney waived his right to cross examine concerning the victim's bias (App. 6), a critical area of questioning. It appears that Petitioner's trial attorney just didn't have a plan to get the evidence introduced, and that his lack of preparation severely damaged the defense.

In addition, Petitioner's trial attorney was cut short in his cross about the alleged victim's mood swings and thought disorders because he had not properly set up the testimony. (T-78) The live testimony of RRF is recounted above as almost entirely composed of yes answers to leading questions of the District Attorney. Though the child's stories had been inconsistent at best, Petitioner's trial attorney did nothing to limit the State from having the child admit the story the state preferred. Trial counsel never made objection.

The Georgia Court of Appeals found numerous waivers from Petitioner's attorney, but based its

decision on remand only on its novel interpretation of the Child Hearsay statute application to adults and its determination that repetitive claims that the child was told to tell the truth did not bolster the child's statements. (App. 9)

Without a remand to discover the extent of choice or haphazard in the omission and commission listed above, Petitioner will be unable to adequately prove ineffectiveness, much as this Court set out in *Massaro v. United States*. Petitioner has made a facial showing of harm and inadequate performance. He asks this Court to allow him a chance to prove his ineffectiveness claim.

XI. CONCLUSION

Petitioner is forced by Georgia Law to make his initial proof of ineffectiveness on the transcript. He shows that such a proof has been determined by this Court to be inevitably inadequate. To give him the Sixth Amendment rights enjoyed by citizens in the vast majority of states, he asks this Court to find the Georgia rule a violation of the Fourteenth Amendment and grant Petitioner a remand on all issues of ineffectiveness.

Respectfully submitted,

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In the Court of Appeals of Georgia

FIRST DIVISION
ANDREWS, P. J.,
ELLINGTON and ADAMS, JJ.

July 31, 2007

A07A0734. SLADE v. THE STATE.

ADAMS, Judge.

Grady Levon Slade, Jr. was convicted by a jury of three counts of aggravated sodomy, two counts of aggravated child molestation, and two counts of child molestation arising out of various acts involving R. R. F., his wife's grandson. After the trial judge merged three of the counts for sentencing purposes, Slade was sentenced to a total of thirty years to serve. Slade now appeals his conviction on a number of evidentiary grounds and on the ground that he received ineffective assistance of counsel.

1. At trial, the State presented similar transaction evidence of earlier incidents of reported abuse involving Slade's son, when the son was around ten years old. Slade was never prosecuted in connection with those incidents. The State presented testimony from the son, the son's mother and Becky Haley, a child protective services worker, concerning the reported abuse. The State also showed the jury a videotaped interview with the son when he was ten years old. At the time of the trial, Slade's son was 19 years old. Slade contends that the mother's testimony and the videotape were inadmissible hearsay. He argues that the admission of such evidence was error

because the Child Hearsay Statute, OCGA § 24-3-16, should not apply where a former child victim is an adult at the time of trial. But Slade raised no contemporaneous objection to this evidence, and thus failed to preserve this argument for appeal. *Nelson v. State,* 279 Ga. App. 859, 864(1)(b) (632 SE2d 749) (2006).

We acknowledge that Slade's attorney made some reference to an objection to child hearsay before the trial began. The State announced in a pretrial motion hearing that it intended to rely upon the Child Hearsay Statute but noted that "the child" was available and present at the hearing. It is unclear from this statement whether the prosecutor was referring to the child victim, Slade's 19-year-old son, or both. Slade's attorney replied,

> We would be objecting officially for the record but we understand that because the child is present, the court would overrule that objection, typically allow the testimony to be entered. As long as the child is, in fact, – or does, in fact, remain available, we don't anticipate that would be a problem. It's my understanding the child will be called. If not, we will be requesting that the court call the child.

But it is well settled that

> a general objection is too vague and indefinite to present any question for decision either by the trial court or by the appellate courts. To preserve a ground for error, the

> objecting party must state the specific ground upon which the objection is based; the objecting party must do more than merely state that he objects.

(Punctuation and footnote omitted.) *Maxwell v. State,* 267 Ga. App. 227, 229(2) (599 SE2d 228) (2004). No reference was ever made to an objection based upon the age of Slade's son, and we do not view his attorney's generalized pre-trial objection as sufficient to notify the trial court of the legal ground at issue here "so that its applicability could be measured and error avoided." Id. In any event, Slade's attorney sought no ruling from the court on such an objection.

Even if Slade's attorney had objected to the evidence, however, we find no error. "The trial court has broad discretion in determining the admissibility of child hearsay evidence, and we will reverse a trial court's ruling on the admissibility of statements under OCGA § 24-3-16 only if the trial court abused its discretion." (Punctuation and footnote omitted.) *Phillips v. State,* 284 Ga. App. 224, 227(1)(b) (644 SE2d 153) (2007). And this Court has held that "[i]t is plain from the face of that statute that the age of the child at the time the witness testifies is irrelevant as long as the child's statement about which the witness testifies was made while the child was under 14 years of age." *Greer v. State,* 201 Ga. App. 775, 776(4) (412 SE2d 843) (1991) (statute applied to statements by seven-year-old victim who was fifteen at time of trial). See also *Darden v. State,* 206 Ga. App. 400, 401(1) (425 SE2d 409) (1992) (statute applied to statements

of 13-year-old victim, who was 14 at trial). Compare *Foster v. State,* 216 Ga. App. 26, 28(2) (453 SE2d 482) (1994) (Child Hearsay Statute applies to child whose chronological age, not mental age, was under 14 years at time of statement). Slade's son was ten at the time he made the statements at issue, and thus they fall within the provisions of the Child Hearsay Statute. We see no reason to alter the application of the statute in this case simply because the witness was 19 years old at the time of trial.

2. Slade next asserts that the trial court abused its discretion in excluding evidence about the demeanor of R. R. F., the victim in this case, during the time of his reported incidents of abuse. "The defendant in a child molestation case is entitled to a thorough and sifting cross-examination of the State's witnesses. However, the scope of cross-examination is within the sound discretion of the trial court and will not cause reversal unless the discretion is abused." (Citations and punctuation omitted.) *In re M.G.,* 239 Ga. App. 787, 788 (521 SE2d 918) (1999).

Slade's wife, Billie Slade, testified that her grandson R. R. F.'s behavior and mannerisms changed "towards everybody" at that time, especially when he came from his other grandmother's house. But when Slade's trial counsel asked her what she noticed with respect to the changes, the State objected stating, "I would object, your honor. He's going

into specific instances of conduct. That would be improper."[1] The trial court sustained the objection.

Slade contends that this ruling denied him the right to thoroughly cross-examine Billie Slade because he was unable to question her further about the changes in R. R. F.'s behavior. He asserts on appeal that this deprived him of his right to test the child's credibility or to explore the possibility that the child could have been influenced by others, presumably the child's other grandmother, into making the allegations. But the State is correct that Slade never argued these issues to the trial court in response to the objection. Instead, he continued his cross-examination of Billie Slade on other issues. The trial court, therefore, never had the opportunity to consider these arguments in ruling upon the objection.

Accordingly, we must agree with the State that Slade abandoned this argument at trial and acquiesced in the trial court's ruling. While there was no requirement that Slade make a formal exception to the ruling, he was required to voice his position with

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[1] The exact basis for this objection is unclear from the record, as evidenced by the fact that the State has asserted differing grounds on appeal to support it. In its original appellate brief, the State asserted that it had objected to the relevance of the evidence solicited, because the victim's mannerisms and specific instances of conduct toward "everybody" were not relevant. In its motion for reconsideration, the State apparently is asserting that its objection was supportable to the extent that the question sought to solicit evidence of specific instances of bad character in order to impeach the victim.

regard to the ruling after it was made in order to preserve the issue for appeal. *Plaza Properties v. Prime Business Investments,* 273 Ga. 97, 102 (538 SE2d 51) (2000); *Stone v. State,* 177 Ga. App. 750, 752(4) (341 SE2d 280) (1986). By arguing the issue on the record, both the trial court and this Court would have had the opportunity to consider whether the evidence he sought with his questioning was admissible. Instead, we are left with a record that does not clearly state what evidence was sought or what evidence was excluded.[2]

Although we agree with Slade that he would have been entitled to explore the issue of potential bias or improper influence, he failed to inform the trial court that he was seeking such evidence through the line of questioning at issue. Thus while it certainly would have been error for a trial court to prevent a defendant from seeking relevant evidence of bias, no such error occurs where, as here, a defendant acquiesces in the trial court's ruling or abandons an argument at trial. *McGee v. State,* 205 Ga. App. 722, 724(5) (423 SE2d 666) (1992); *Jordan v. State,* 172 Ga. App. 96, 97(2) (322 SE2d 106) (1984).

3. Slade also contends that the trial court abused its discretion in limiting his cross-examination of

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[2] We note, however, that the trial court could have properly sustained an objection to any attempt by Slade to elicit specific instances of misconduct in order to impeach the victim, as the State contends. See *Curtis v. State,* 282 Ga. App. 322, 326(3)(a) (638 SE2d 773) (2006).

Becky Haley, the child protective services worker involved with his son's case. Slade attempted to question Haley about whether in deciding to place a child in a particular home, the Department of Family and Children Services considered the criminal background of those residing in the home. The State objected to the question on the ground of relevancy. Slade's attorney explained that he wanted to show that DFACS allowed R. R. F. to be placed in Slade's home even though he had previously been charged with child molestation. He argued the evidence went to the issue of Slade's credibility because the State had determined that he was an appropriate individual to host children in his home. After an extensive discussion, the trial court sustained the State's objection stating that DFACS' placement procedures and decisions had no relevance to the issue of whether Slade had committed the crimes charged.

"The admission or exclusion of evidence which is objected to on the ground of relevancy lies within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent a clear abuse of discretion." *Brown v. State,* 280 Ga. App. 884, 887(1), 635 SE2d 240 (2006). We find no abuse of discretion. While this line of questioning may have addressed the actions of DFACS employees, it had no bearing on the issue of whether Slade committed the acts of which he was accused.

4. Slade also argues that a remand is necessary to develop a record on his claim that his trial counsel rendered ineffective assistance in the trial below. But

"it is not necessary to remand an appeal when the appellate court can determine from the record whether the appellant has satisfied the test to establish ineffective assistance of counsel." (Citations omitted.) *Hunter v. State,* 281 Ga. 693, 697(7) (642 SE2d 668) (2007). Under this test, Slade "must prove that counsel's performance was deficient and that this deficient performance prejudiced the defense; that is, whether there is a reasonable probability that the outcome of the proceedings would have been different, but for counsel's deficiency." (Punctuation and footnotes omitted.) *Lawson v. State,* 280 Ga. App. 870, 872(2) (635 SE2d 259) (2006).

Slade asserts that his trial counsel was ineffective in failing to object to (1) the use of child hearsay in connection with the similar transaction involving Slade's son and (2) purported bolstering by two witnesses who testified that they told the victim to tell the truth. We have already determined in Division 1 that no error occurred in the use of child hearsay in connection with the incidents involving Slade's son, so a remand is not necessary in connection with that argument.

With regard to the second argument, Slade contends that his trial counsel should have objected when the child advocate and R. R. F.'s other grandmother testified that they told the child to tell the truth. Slade is correct that "under no circumstance may a witness's credibility be bolstered by the opinion of another, even an expert, as to whether the witness is telling the truth." (Punctuation and footnote omitted.)

Berman v. State, 279 Ga. App. 867, 870(3) (632 SE2d 757) (2006). But the statements at issue merely consisted of the witnesses' instructions to the victim regarding the need to tell the truth. Such statements do not constitute an opinion by the witnesses as to whether the victim was, in fact, truthful. *Berman v. State*, 279 Ga. App. at 870(3). Accordingly, no remand is necessary to address Slade's claims of ineffective assistance of counsel.

Judgment affirmed. Andrews, P. J., and Ellington, J., concur.

Court of Appeals
of the State of Georgia

ATLANTA, **JUL 31 2007**

The Court of Appeals hereby passes the following order:

A07A0734. SLADE v. THE STATE.

Upon consideration of the motion for reconsideration filed on behalf of the appellee in the above styled case, said motion is hereby granted, and it is ordered that the opinion of this court issued on and the judgment entered on July 9, 2007, be hereby vacated and that the opinion be withdrawn from the files. It is further ordered that the opinion attached hereto be substituted for the original opinion issued on July 9, 2007, and judgment shall issue accordingly.

It is further ordered that the April term of this court be extended "'relative to this case to enable parties to file a motion for [reconsideration]. OCGA §(§) 15-2-4(, 15-3-2).' *Haygood v. City of Doraville*, 256 Ga. 566, 567 (350 SE2d 766) (1986)." *Stuckey v. Richardson*, 188 Ga. App. 147, 149(4) (372 SE2d 458) (1988).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

/s/ William L. Martin, III

Court of Appeals
of the State of Georgia

ATLANTA, JANUARY 17, 2007

The Court of Appeals hereby passes the following order:

A07A0734.
GRADY LAVON SLADE, JR. v. THE STATE.

Upon consideration of the Motion to Withdraw as Counsel filed in this case, it is ordered that it be hereby granted. The Clerk of this Court is ordered and directed to remove the name of JERRY WAYNE MONCUS as attorney of record for the appellant.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

/s/ William L. Martin, III

IN THE SUPERIOR COURT OF MURRAY COUNTY

FINAL DISPOSITION

THE STATE OF GEORGIA

vs

GRADY LAVON SLADE, JR.

CRIMINAL ACTION NO. 05-CR-331

OFFENSES CT. 1 & 2: AGGRAVATED SODOMY – F, CT. 3 & 4: AGGRAVATED CHILD MOLESTATION – F, CT. 5 & 6; CHILD MOLESTATION – F, CT. 7: AGGRAVATED SODOMY – F

FEBRUARY TERM, 2006

(Filed Feb. 16, 2006)

☐ **PLEA:**
☐ NEGOTIATED
☐ GUILTY ON COUNT(S)
☐ NOLO CONTENDERE ON COUNT(S)
☐ TO LESSER INCLUDED OFFENSE(S)

ON COUNT(S)

☒ JURY
☐ NON-JURY

[x] **VERDICT:**
[x] GUILTY ON COUNTS 1,2,3,4,5,6,7

[ ] **OTHER DISPOSITION:**
[ ] NOLLE PROSEQUI ORDER ON COUNT(S)

[ ] NOT GUILTY ON COUNT(S)

[ ] DEAD DOCKET ORDER ON COUNT(S)

[ ] GUILTY OF INCLUDED OFFENSE(S) OF ON COUNT(S)

[x] DEFENDANT WAS ADVISED OF HIS/~~HER~~ RIGHT TO HAVE THIS SENTENCE REVIEWED BY THE SUPERIOR COURTS SENTENCE REVIEW PANEL.

---

[x] **FELONY SENTENCE**

[ ] **MISDEMEANOR SENTENCE**

WHEREAS, the above-named defendant has been found guilty of the above-state offense, WHEREUPON, it is ordered and adjudged by the Court that the said defendant is hereby sentenced to confinement for a period of

CT. 1: THIRTY (30) YEARS TO SERVE
CT. 2: THIRTY (30) YEARS TO SERVE CONCURRENT WITH COUNT 1
CT. 3: MERGES WITH COUNT 1 FOR SENTENCING PURPOSES
CT. 4: MERGES WITH COUNT 2 FOR SENTENCING PURPOSES
CT. 5: TWENTY (20) YEARS TO SERVE CONCURRENT WITH COUNT 1

CT. 6: TWENTY (20) YEARS TO SERVE CONCURRENT WITH COUNT 1
CT. 7: MERGES WITH COUNT 2 FOR SENTENCING PURPOSES

In the State Penal System or such other institution as the Commissioner of the Georgia Department of Corrections or Court may direct, to be computed as provided by law.

THIS OFFENSE CONSTITUTES A SERIOUS VIOLENT FELONY AND THE DEFENDANT IS HEREBY SENTENCED PURSUANT TO O.C.G.A. 17-10-6.1

So ordered this 15th day of FEBRUARY, 2006.

/s/ Jack Partain
JACK PARTAIN, J.S.C.C.C.

IN THE SUPERIOR COURT OF MURRAY COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	: Indictment No: 05-CR-227
vs	:
GRADY LAVON SLADE, JR.	: CHILD MOLESTATION (2)

MOTION TO ENTER A NOLLE PROSEQUI

(Filed Feb. 16, 2006)

COMES NOW the State of Georgia and moves this Court to enter a Nolle Prosequi in the above-styled case. The defendant was re-accused and tried on accusation no. 05-CR-331.

This the 16 day of February, 2006.

/s/ Steve Spencer
STEVE SPENCER
ASSISTANT DISTRICT ATTORNEY
CONASAUGA JUDICIAL CIRCUIT

CONSENT

After having heard and considered the Motion of the State to enter a Nolle Prosequi in the above-styled case, the Court hereby grants consent.

This the 16th day of FEB, 2006.

/s/ Jack Partain
JUDGE, SUPERIOR COURT
CONASAUGA JUDICIAL CIRCUIT

cc: JERRY MONCUS
GRADY LAVON SLADE, JR.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

Date: January 28, 2008

Todd Mitchell Johnson
JOHNSON LAW, P.C.
P. O. Box 48
Cohutta, GA 30710

Case No. S07C1895

GRADY LAVON SLADE, JR. v. THE STATE

COURT OF APPEALS CASE NO. A07A0734

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Therese S. Barnes, Clerk

IN THE COURT OF APPEALS
STATE OF GEORGIA

GRADY LAVON SLADE, JR.
Appellant

v. **Case No. A07A0734**

THE STATE,
Appellee

BRIEF OF APPELLANT

Respectfully Submitted:
Todd M. Johnson
State Bar #395651
Johnson Law, P.C.
P.O. Box 48
Cohutta, GA 30710
(706) 694-4298
(706) 694-3173 facsimile

Appellant:
Grady L. Slade, Jr.
GDC #1209673
Phillips State Prison
2989 W. Rock Quarry Road
Buford, GA 30519
(770) 932-4500

* * *

4. Appellant's Trial Counsel Was Ineffective and Remand Is Required for Hearing.

The standard for assessing whether trial counsel rendered constitutionally effective assistance is set out in ***Strickland v. Washington,*** *466 U.S. 668, 104*

SC 2052, 80 LE2d 674 (1984), and adopted in ***Smith v. Francis,*** *253 Ga. 782, 325 SE2d 362 (1985).*

Under *Strickland*, a criminal defendant must show both that his counsel's performance was deficient, and but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the trial would have been different. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Strickland***, 466 U.S. at 694.

"Both the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact." ***Lajara v. State,*** *263 Ga. 438, 440, 435 S.E.2d 600 91993)*, citing ***Strickland***, *466 U.S. at 698.*

Here, the Appellant was denied an opportunity to develop the errors of his trial counsel and their effect upon his trial more fully in hearing and Appellant's trial counsel was unable as a witness to raise those errors under the cannons of ethics. Under *Smith v. State*, 255 Ga. 654, 656, 341 S.E.2d 5 (1986), remand is appropriate where a facial showing of ineffectiveness is made.

b. Appellant's Trial Counsel Was Ineffective.

i. Appellant's Trial Counsel Failed to Object To Bolstering.

Appellant's trial counsel failed to make one objection to Brenda Hoffmeyer or Christine Forrest

talking about how they told R. to tell the truth or that R. said he was telling the truth. Hoffmeyer, an experienced employee of the District Attorney's office is a paid professional witness who took great liberties by bolstering the story allegedly brought out of R. Here, we anticipate that Appellant's trial counsel will testify that upon reading the transcript he was struck with how many times the bolstering occurred without challenge. He is a fine trial attorney, but he agrees he dropped the ball.

ii. Appellant's Trial Counsel Failed to Make Specific Objection to Use of Child Hearsay with an Adult.

Although one general objection was made (T-18), when the prosecution attempted to admit the hearsay videotape of Appellant's adult son, State Exhibit 2, Appellant's trial attorney stated, "No Objection". Here, the use of the child hearsay statute was violated by the State with a fully capable adult. Should this Court find that Appellant's trial counsel failed to preserve the error associated with child hearsay statements of adult Grady Lavon Slade, III, Appellant will show that his counsel did not perform up to the standard one would expect of a lawyer defending child molestation charges.

Whether adequate time for preparation was allowed in this case must rest upon its unique factual situation. "The recurring theme of opinions concerning this problem has been that undue haste in the

administration of justice is as much condemned as unnecessary delay . ." ***Lowrance v. State,*** *183 Ga. App. 421, 359 S.E.2d 196 (1987).* Appellant shows that his case was not properly prepared to his detriment and he urges a reversal.

Under ***Strickland v. Washington,*** *466 U.S. 668, 104 SC 2052, 80 LE2d 674 (1984),* and a ***Smith v. Francis,*** *253 Ga. 782, 325 SE2d 362 (1985),* appellant will show ineffectiveness and sufficient prejudice for reversal of his case. He urges the court to grant him a remand for a new trial hearing on ineffectiveness.

* * *

ACCUSATION	WITNESSES
NO. 05-CR-331 Murray Superior Court August Term, 2005. **THE STATE OF GEORGIA** **vs.** **GRADY LAVON SLADE, JR.** Cts. 1, 2 : AGGRAVATED SODOMY – F Cts. 3, 4 : AGGRAVATED CHILD MOLESTATION – F Cts. 5, 6 : CHILD MOLESTATION – F Ct. 7 : AGGRAVATED SODOMY – F	Brett Morrison, MCSO. I, GRADY LAVON SLADE, JR., WAIVE MY RIGHT TO INDICTMENT BY GRAND JURY AND WISH TO PROCEED BY ACCUSATION THIS 5th DAY OF OCTOBER, 2005. /s/ Grady Slade, Jr. GRADY LAVON SLADE, JR. /s/ Jerry W. Moncus JERRY MONCUS, ATTORNEY FOR DEFENDANT
The Defendant, **GRADY LAVON SLADE, JR.**, waives formal arraignment, and pleads Not Guilty October 5th, 2005 Date /s/ Grady Slade Jr. Defendant /s/ Jerry W. Moncus Defendant's Attorney	(Filed Oct. 5, 2005)

/s/ Jerry W. Moncus
KERMIT MCMANUS,
District Attorney

STATE OF GEORGIA, MURRAY COUNTY

IN THE SUPERIOR COURT OF SAID COUNTY

In the name and on the behalf of the citizens of Georgia, the undersigned District Attorney for the County and State aforesaid, does hereby charge and accuse

GRADY LAVON SLADE, JR
with the offense of
AGGRAVATED SODOMY

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, the exact date being unknown, did in violation of O.C.G.A. §16-6-2(a) commit the offense of Aggravated Sodomy, when he did perform a sexual act involving the mouth of the accused and the sex organs of another person, to wit: R.R.F., R.R.F. being a person less than ten years of age at the time the described act of Sodomy was committed with him, by placing his mouth into contact with the sex organs of R.R.F., contrary to the laws of said State, the good order, peace and dignity thereof,

COUNT 2

In the name and on the behalf of the citizens of Georgia, the undersigned District Attorney for the County and State aforesaid, does hereby charge and accuse

GRADY LAVON SLADE, JR
with the offense of
AGGRAVATED SODOMY

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, the exact date being unknown, did in violation of O.C.G.A. §16-6-2(a) commit the offense of Aggravated Sodomy, when he did perform and submit to a sexual act involving the sex organs of the accused and the mouth of another person, to wit: R.R.F., R.R.F. being a person less than ten years of age at the time the described act of Sodomy was committed with him, by placing his penis into contact with and into said child's mouth, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 3

In the name and on the behalf of the citizens of Georgia, the undersigned District Attorney for the County and State aforesaid, does hereby charge and accuse

GRADY LAVON SLADE, JR
with the offense of
AGGRAVATED CHILD MOLESTATION

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, the exact date being unknown, did in violation of O.C.G.A. §16-6-4(c) commit the offense of Aggravated Child Molestation, when he did perform an immoral and indecent act which did involve an act of sodomy to, with, and in the presence of R.R.F., a child under the age of sixteen (16) years, by placing his mouth into contact with said child's penis, with intent to arouse and satisfy the sexual desires of said accused and child, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 4

In the name and on the behalf of the citizens of Georgia, the undersigned District Attorney for the County and State aforesaid, does hereby charge and accuse

GRADY LAVON SLADE, JR
with the offense of
AGGRAVATED CHILD MOLESTATION

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, the exact date being unknown, did in violation of O.C.G.A. §16-6-4(c) commit the offense of Aggravated Child Molestation, when he did perform an immoral and indecent act which did involve an act of

sodomy to, with and in the presence of R.R.F., a child under the age of sixteen (16) years, by placing his penis into contact with and into said child's mouth, with intent to arouse and satisfy the sexual desires of said accused, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 5

In the name and on the behalf of the citizens of Georgia, the undersigned District Attorney for the County and State aforesaid, does hereby charge and accuse

GRADY LAVON SLADE, JR
with the offense of
CHILD MOLESTATION

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, the exact date being unknown, did in violation of O.C.G.A. §16-6-4(a) commit the offense of Child Molestation, when he did an immoral and indecent act to, with and in the presence of R.R.F., a child under the age of sixteen (16) years, by placing his hand into contact with R.R.F.'s penis, with intent to arouse and satisfy the sexual desires of said accused, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 6

In the name and on the behalf of the citizens of Georgia, the undersigned District Attorney for the County and State aforesaid, does hereby charge and accuse

GRADY LAVON SLADE, JR
with the offense of
CHILD MOLESTATION

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, the exact date being unknown, in violation of O.C.G.A. § 16-6-4(a) commit the offense of Child Molestation, when he did an immoral and indecent act to, with and in the presence of R.R.F., a child under the age of sixteen (16) years, by taking said child's hand pulling it towards and placing it into contact with the accused's penis, with intent to arouse and satisfy the sexual desires of said accused, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 7

In the name and on the behalf of the citizens of Georgia, the undersigned District Attorney for the County and State aforesaid, does hereby charge and accuse

GRADY LAVON SLADE, JR.
with the offense of
AGGRAVATED SODOMY

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, the exact date being unknown, did in violation of O.C.G.A. §16-6-4(a) commit the offense of Aggravated Sodomy, when he did perform a sexual act involving the sex organs of the accused and the mouth of another person, to-wit: R.R.F., by pushing R.R.F.'s head onto the accused's penis, causing his mouth to come into contact with the accused's penis, said act being done with force and against the will of said person, contrary to the laws of said State, the good order, peace and dignity thereof.

SPECIAL PRESENTMENT	WITNESSES
NO. 05-CR-227 Murray Superior Court February Term, 2005. **THE STATE OF GEORGIA** **vs.** **GRADY LAVON SLADE, JR.** 2 Cts. CHILD MOLESTATION – F True BILL /s/ Norris Kilgore Foreman	Brett Morrison, MCSO, Christine Forrest, 2473 Old Highway 411, Chatsworth, Ga. Laura News, DFCS, (Filed Jul. 20, 2005)
The Defendant, GRADY LAVON SLADE, JR., waives formal arraignment, and pleads _____ _____ Date _____ Defendant _____ Defendant's Attorney KERMIT MCMANUS, District Attorney	

STATE OF GEORGIA, MURRAY COUNTY

IN THE SUPERIOR COURT OF SAID COUNTY

THE GRAND JURORS SELECTED, CHOSEN AND SWORN FOR THE COUNTY OF MURRAY, TO-WIT:

Norris Allen Kilgore, Foreman

Johnny Elrod	L.H. Hipp
Richard Leon Hall	Frank Walker
Lanell Charles Silvers	Lisa K. Hudson
Mitchell Long	Mark Terry Hensley
Albert Jay Green	Juanita Aline Parker
~~Kevin Claude Ballew~~ Absent	~~T.R. Porter~~ Absent
Hubert Buddy Bagley, Jr	Barbara B. Brookshire
Marsha Denise Parker	John T. Mitchem
Bruce G. Coulter	Stephen D. Hahn
Janice B. Durocher	Bobby Steven Peden
Mary Nell Calfee	Emma Jean Long

In the name and on the behalf of the citizens of Georgia, charge and accuse

GRADY LAVON SLADE, JR
with the offense of
CHILD MOLESTATION

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, did an immoral and indecent act upon the person of R.R.F., a child under the age of sixteen (16) years, by placing his hand on the penis of R.R.F., with intent to arouse and satisfy the sexual desires of said accused, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 2

AND THE GRAND JURORS, aforesaid, in the name and on the behalf of the citizens of Georgia, charge and accuse

GRADY LAVON SLADE, JR.
with the offense of
CHILD MOLESTATION

for that the said accused in the County of Murray and the State of Georgia on or before the 11th day of July, 2005, did an immoral and indecent act with R.R.F., a child under the age of sixteen (16) years, by placing the hand of R.R.F. on his penis, with intent to arouse and satisfy the sexual desires of said accused, contrary to the laws of said State, the good order, peace and dignity thereof.